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In re Application of SHUYA
Application No.: 10/519,393
PCT Application No.: PCT/US03/11320
Int. Filing Date: 14 April 2003
Priority Date Claimed: 16 April 2002
For: AN ELECTRONIC INFORMATION ITEM
SELECTION FOR TRADE AND TRADED ITEM
CONTROL DELIVERY SYSTEM

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: DECISION ON PETITION
: UNDER 37 CFR 1.137(a)
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This is in response to applicant's Petition For Revival Under 37 CFR 1.137(a), filed in the United States Patent and Trademark Office on 21 December 2004 is **DISMISSED**.

BACKGROUND

On 14 April 2003, applicant filed international application PCT/US03/11320. The international application claims a priority date of 16 April 2002 and designates the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 October 2003. The deadline for paying the basic national fee in the United States is thirty months from the priority date, that is 16 October 2004. The application became abandoned at midnight 16 October 2004 for failure to pay the national basic fee.

On 21 December 2004, applicant filed the instant petition for revival accompanied by, *inter alia*, a transmittal letter for entry into the US national stage under 35 U.S.C. 371, a basic national fee of \$100, a copy of the international application as required by 35 U.S.C. 371(c)(2), an executed declaration as required by 35 U.S.C. 371(c)(4), and a petition fee of \$65.

DISCUSSION

37 CFR 1.137(a), Revival of abandoned application or lapsed patent, in part, states:

Where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

Applicant has satisfied item (4), since the application was filed after 08 June 1995, a terminal disclaimer is not required.

As to item (1), a copy of the international application has been filed; however, the required basic national fee has not been paid. A basic national fee of \$100 was received; however, the required basic national fee which is due by applicant is \$150; see Fee Code 2631, effective 08 December 2004. Thus, applicant has not met the requirement under 37 CFR 1.137(a)(1).

As to item (2), the petition fee of \$65 was received; however, the required petition fee which is due by applicant is \$250; see Fee Code 2452, effective 08 December 2004. Thus, applicant has not met the requirement under 37 CFR 1.137(a)(2).

As to item (3), applicant's petition states that:

"The time I was first notified by my patent attorney for the Preliminary Examination Report (which was received by the law office on Sept. 9, 2004) and the official publication of my PCT application (which was published in October of 2003 and was received by the law office on Nov. 1, 2003) was on November 29, 2004 – It is already one month passed the 30 month deadline required by PCT Rule. I have two email account open to keep communication with the attorney although one of them is shut off by August this year, but I never receive any notice about the above important events until Nov. 29, 2004. I now decide to

submit the National Stage documents and proceed with your authority directly on my own.”

Upon review of the above-captioned application shows that the 30-month deadline for entering the national stage expired on 16 October 2004. Applicant failed to file national stage papers until 21 December 2004.

An applicant for patent is solely responsible for meeting all applicable deadlines. As stated in MPEP 711.03(c)(II)(C)(2):

Delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute "unavoidable" delay. See *Haines*, 673 F. Supp. at 317, 5 USPQ2d at 1132; *Vincent v. Mossinghoff*, 230 USPQ 621, 624 (D.D.C. 1985); *Smith v. Diamond*, 209 USPQ 1091 (D.D.C. 1981); *Potter v. Dann*, 201 USPQ 574 (D.D.C. 1978); *Ex parte Murray*, 1891 Dec. Comm'r Pat. 130, 131 (1891).

Furthermore, applicant has not presented any evidence concerning the procedures in place that should have avoided the error resulting in the delay; evidence concerning the training and experience of the persons responsible for the error; and copies of any applicable docketing records to show that the error was in fact the cause of the delay.

It is recommended that petitioner obtain relief by filing a request for reconsideration pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) a proper reply, (2) the petition fee required by law, (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(a) is **DISMISSED** without prejudice as to the National Stage in the United States of America.

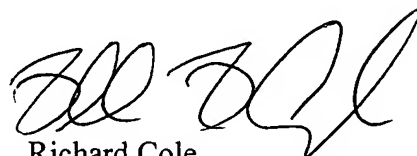
Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mailing date of this Decision. Applicant can submit appropriate evidence in accordance with 37 CFR 1.137 (a) or to request other appropriate relief, e.g. a petition to revive under 37 CFR 1.137(b). The reconsideration request should include a cover letter entitled “Renewed Petition under 37 CFR 1.137(a)” or “Petition under 37 CFR 1.137(b)”, as appropriate.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any future correspondence with respect to this matter should be directed to the Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and with the contents of the letter directed to the attention of the PCT Legal Office.



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